

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF ADMINISTRATION

In the Matter of the Appeal of the
Determination of the Responsible
Authority for McLeod County
Social Services Department that
Certain Data Concerning Mr.
Phillipe DeAbreau Are Accurate
and/or Complete

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Allan W. Klein on February 6, 1996, in Glencoe, Minnesota. It arises out of an appeal by Phillippe DeAbreau from the County's determination that certain data in its files is accurate and complete.

Appearing on behalf of the Appellant herein, Phillippe DeAbreau, was Diane L. Gordon, of the firm of Jensen & Gordon, 22 North Main, Hutchinson, Minnesota 55350.

Appearing on behalf of the Respondent herein, McLeod County Social Services Department, was Jody Winters, Assistant McLeod County Attorney, 214 Courthouse, 830 - 11th Street East, Glencoe, Minnesota 55336.

The record closed on February 27, 1996, upon receipt of the final post-hearing submission.

This Report is a recommendation, not a final decision. The Commissioner of Administration will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Donald A. Gemberling, Director of the Public Information Policy Analysis Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155, telephone (612) 296-6733, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Is the data contained in Exhibit 1, which comes from the files of the McLeod County Social Services Department, pertaining to an incident which took place on July 21, 1994 and the County's conclusions about that incident, accurate and complete within the meaning of Minn. Stat. § 13.04?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In July of 1994, Phillipe DeAbreau was married to Ruta DeAbreau. They lived in Hutchinson with their 17-year-old daughter, Isabelle, and a younger child, Joshua. The relationship between Phillipe and Ruta DeAbreau was in difficulty at that time, and Phillipe DeAbreau was not always living at home. In addition, the relationship between Phillipe DeAbreau and his teenage daughter, Isabelle, was strained. During this time, Phillipe DeAbreau treated Ruta as the person responsible for Isabelle's behavior, and when he disagreed with something Isabelle was doing, Phillipe would tell Ruta to have Isabelle correct it. In summary, the family was experiencing difficulties, and the relationship between Phillipe and Isabelle was intertwined with the relationship between Phillipe and Ruta.

2. On July 21, 1994, Phillipe had an argument with Ruta and Isabelle over whether or not Isabelle could have a credit card. As the argument escalated, Isabelle began calling her father filthy names, using language which her father thought was "extremely bad". He told his wife to make Isabelle stop it, but she was of no help, and Phillipe felt that both of them were "ganging up" on him. He lost his temper and attempted to slap Isabelle on the buttocks. In the process, however, Isabelle put her left hand behind her back in an attempt to defend herself, and Phillipe hit her hand. Ruta then intervened, and sent Isabelle to her room. Phillipe left the house, and stayed away for several days.

3. Isabelle complained about her wrist and finger hurting. It was decided that she should have it checked out at the local hospital's emergency room. Phillipe and Ruta agreed that there would be no mention of the hitting incident, and that Isabelle would tell the hospital that the injury occurred during basketball practice. This was done in order to assure insurance coverage.

4. On July 23, two days after the incident, Ruta took Isabelle to the emergency room of the Hutchinson Community Hospital. Isabelle reported injuring her left hand playing basketball on Thursday. She stated that she jammed her third finger, and that her wrist hurt her when she moved it. X-rays were taken, indicating no broken bones. Medical personnel concluded that there had been a contusion of the hand with a sprain of the wrist and probable resultant tendonitis. They recommended a wrist brace, followed by wrist flexibility exercises. Ibuprofen was prescribed for pain relief as needed.

5. On July 29, 1994, the incident was reported to McLeod County Social Services as a possible incident of physical abuse.

6. The County undertook an investigation of the incident, which included interviews with Isabelle, Ruta, and Phillipe. After gathering information from them, and a variety of other sources, the County child protection specialist determined that child maltreatment had, in fact, occurred when Phillipe struck Isabelle. However, by the time the investigation had ended (in October of 1994), Phillipe had moved out of the house

and Isabelle reported that "things are fine now". Therefore, the County determined that child protective services were not needed. On October 17, 1994, the County notified Phillipe that it had determined that an incident of physical abuse had occurred, but that child protective services were not needed.

7. Through his attorney, Ms. Gordon, Phillipe formally requested changes in the information maintained by the County. In a letter dated November 18, 1994, he requested that the file be changed to indicate that there had been no determination of maltreatment; that there be no restrictions regarding Isabelle's contact with her father; that the record be destroyed; and that local law enforcement authorities be notified that maltreatment had not occurred. Phillipe wanted the file to indicate that this was not an incident of child abuse, but rather an incident of family discipline and that while he did intend to spank Isabelle for her behavior, he did not intend to harm her by hitting her wrist or finger.

8. On November 29, the County responded, indicating that it believed its initial determinations were correct and that there was no reason to change them.

9. On December 20, Ms. Gordon filed an appeal of the County's determination with the Office of Administrative Hearings. Following some delay, it was determined that she must first file her appeal with the Commissioner of Administration, which was done on May 2, 1995. Ultimately, it was determined that the matter would have to go to hearing, and on January 5, 1996, the Commissioner issued a Notice of and Order for Hearing, setting the hearing for February 6.

10. The hearing was held on February 6, 1996. Prior to the start of the hearing, counsel agreed to modify the County's file by redacting certain information from Exhibit 1. During the hearing, questions were raised about the fact that the County investigator had not examined any medical records to determine the extent of Isabelle's injuries. Following the hearing, Ms. Gordon obtained copies of the hospital record relating to the July 23 treatment. They were filed with the Administrative Law Judge. These records indicated that Isabelle and her mother reported that the incident occurred while playing basketball. The Administrative Law Judge gave the County 20 days to file responsive materials. The County did file an affidavit from the investigator, who had since obtained additional documentation from the hospital and statements from Ruta and Isabelle DeAbreau relating to the insurance motivation for the basketball story.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Administrative Law Judge and the Commissioner of Administration have jurisdiction in this matter pursuant to Minn. Stat. § 13.04, subd. 4 and 14.50. The Department of Administration has complied with all relevant substantive and procedural requirements of law or rule. The Notice of the hearing in this matter was proper in all respects, and the Commissioner has authority to take the action proposed.

2. That pursuant to Minn. Stat. § 13.04, subd. 4, an individual may contest the accuracy or completeness of public or private data concerning himself and may appeal the determination of the responsible authority in this regard pursuant to the provisions of the Administrative Procedure Act.

3. Pursuant to Minn. Rule pt. 1400.7300, subp. 5, the burden of proof in this matter is upon Appellant Phillipe DeAbreau to prove, by a preponderance of the evidence, that the data is not accurate and/or complete. Pursuant to Minn. Rule pt. 1205.1500, subp. 2.A., "accurate" means that the data in question is reasonably correct and free from error. Pursuant to subpart 2.B. of that same rule, "complete" means that the data in question reasonably reflects the history of an individual's transactions with a particular entity. Omissions in an individual's history that place the individual in a false light shall not be permitted.

4. Phillipe DeAbreau has failed to demonstrate by a preponderance of the evidence that there are inaccuracies or incomplete statements in Exhibit 1, as modified prior to the start of the hearing. More particularly, DeAbreau has failed to demonstrate any inaccuracies or incompleteness in the conclusion contained in the letter to him dated October 17, 1995, to the effect that physical abuse did occur.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED to the Commissioner of Administration that she issue an Order finding Exhibit 1, as modified, to be accurate and complete.

Dated this 1st day of March, 1996.

ALLAN W. KLEIN
Administrative Law Judge

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NOTICE

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Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The underlying question in this appeal is whether or not the injury of July 21, 1994, constituted child abuse. Minn. Stat. § 626.556 mandates the reporting and

investigation of suspected abuse of children. This statute at subdivision 2(d) defines "physical abuse" as "any physical or mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means" The first subdivision of section 626.556 declares it to be the public policy of this state to protect children whose health or welfare may be jeopardized through physical abuse and make the home safe for them by promoting responsible child care in all settings. It is consistent with these goals to include the July 21 incident within the ambit of the reporting statute. It is not unusual for abuse to occur in the course of disciplining a child, nor is it unusual for a parent to later state that they had no intent to hurt the child. Neither of these "excuses" protects a child from the harm inflicted by an angry parent. The fact that this incident was reported, and the fact that it was determined to be an incident of physical abuse, is an accurate reflection of what the Legislature intended when it enacted this statute. There is no reason to alter the County's files beyond those changes already made to Exhibit 1.

AWK